IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20616 of 2004

Between:

**JC-747889-N Sub Major Indra Deo Rai, s/o Sri Harinath Rai,
r/o 3 TRG BN Secunderabad (A.P.)**

..... PETITIONER

AND

1 The DG EME Army HQ New Delhi.
2 Officer In Charge EME Records & The Commandant, 1 EME Centre, Secunderabad (A.P.)
3 The Commanding Officer 3 Training Battalion, IEME Centre, Secunderabad, A.P.
4 IC-49370-Y LT COL Ashok Kumar, 2nd in Command 3 Training Battalion, 1 EME Centre, Secunderabad A.P.
5 The Commanding Officer, 627 EME Battalion, c/o 56 APO

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction, orders, or a writ; more appropriately one in the nature of a writ of mandamus directing/declaring the action of respondents herein "declare Battalion Part I Order Serial No.482 dated 06-09-2004 of the 3rd respondent unit directing the petitioner herein to move to 5th respondent herein on posting/transfer terms of 2nd respondents proceedings 1751/950/ARMR/CA-5 dated 21 Aug 2004 (which proceedings already cancelled by 2nd respondent herein vide fresh proceedings No.1752/98/CAN/MISC/CA-5 dated 18 Oct 2004) as being capricious, without authority and therefore violative of petitioner's Fundamental rights guaranteed under Article 14, 16 & 21 of the Constitution of India and therefore ULTRA VIRES" and pass such other direction, order or orders.

Counsel for the Petitioner:MR.VISHAL SAXENA

Counsel for the Respondents.: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 20616 of 2004

O R D E R:

At the request of the learned counsel appearing for both the parties, the main writ petition itself is taken up for disposal.

The writ petition is filed praying for issuance of writ of Mandamus declaring the Battalion Part I Order Serial No. 482 dated 6.9.2004 of the 3rd respondent unit directing the petitioner herein to move to 5th respondent herein on posting/transfer terms of 2nd respondent's proceedings 1751/950/ARMR/CA-5 dated 21.8.2004 as being capricious and without authority.

The brief allegations in the affidavit for the purpose of disposal of the writ petition may be delineated as follows:

The petitioner is a Junior Commissioner Officer of the Indian Army having served 34 years of unblemished and exemplary service. On promotion as Subedar Major, he was posted in the month of September, 2001 from 3 EME Centre Bhopal to 6006 (I) Armoured Workshop which was in field vide proceedings of the 2nd respondent dated 10.8.2001. In the month of June 2002, again the petitioner was transferred from the said place to the EME Centre, Secunderabad vide proceedings dated 26.6.2002. It is alleged that the 4th respondent developed grudge against the petitioner for the reasons best known to him and not known to the petitioner and started

harassing him. The petitioner has been detained by the 4th respondent personally through a circular order dated 11.9.2004 to relieve another Junior Commissioner Officer from the duties of in-charge Swimming Pool. When the petitioner herein explained the practical problem of leaving Swimming Pool without relief, 4th respondent got wild and ordered the Adjutant to march the petitioner. Thereafter, the 4th respondent also ordered vide letter dated 2.11.2004 to perform the duties of Mobile Patrol JCO. According to him, the Subedar Major has never been detained in such duties. Thereafter, the 4th respondent got impugned posting order of the petitioner transferring him to a Unit in Jammu and Kashmir. Challenging the same, the present writ petition is filed.

The respondents filed counter affidavit stating that EME Records Office Instruction No.33/83 is not in operation as the same has been superseded by para 59 of EME Records Instruction No.2/94 in which no provision exists for not disturbing personnel from their present unit. The petitioner was posted to meet the operational requirement of the Battalion which is committed in operational duties in Counter Insurgency in Jammu & Kashmir Sector. The cancellation of posting order has been issued by EME Records, erroneously. Accordingly the EME Record cancelled the letter dated 18.10.2004 vide their Letter No.1875/CA-5/6 dated 2.11.2004. The complete profile of the petitioner was examined and the petitioner was apprised of the policy of posting of Subedar Majors in the Corps of EME. According to the respondents, the petitioner did not submit any explanation. The petitioner has handed over the charge of Small Arms Group to the next JCO, Subedar on 5.11.2004 and therefore he has been relieved of all responsibilities. Hence the respondents pray to dismiss the petition.

Learned counsel for the petitioner contended that the petitioner has been left with 10 months of service and therefore he is not liable to be transferred from the present unit and that is the reason why a posting order dated 21.8.2004 has been cancelled and that as

per para 47of the EME Records Office Instructions the Officers shall be posted in such a way that they get approximately two years tenure with last unit and this applies to the personnel due for retirement and therefore he prays to quash the impugned proceedings.

On the other hand, learned counsel for the respondents contended that it is an administrative transfer. Along with so many officers the petitioner was also transferred and accordingly he was relieved on 5.11.2004 and that no *mala fides* are attributed against the transferring authority. He further contended that transfer is only an incidence of service and the army personnel cannot get any indefeasible right claiming to post to a particular place. Hence the petition is devoid of merit and it is liable to be dismissed.

Paragraph 47 of the EME Record Office Instructions, Secunderabad reads as follows:

"Postings of personnel due for retirement will be regulated as under:

a. Postings will be planned in such a way that they get approximate 2 years tenure with last unit.

b. They will neither be posted to ERE nor LRWs/UROs".

The learned counsel for the petitioner placed strong reliance on this paragraph of EME Record Office Instructions for retention in the Secunderabad Centre for the remaining 10 months. This paragraph 47 has been amended in ROI No. 1/2001 dated 27.2.2001 whereunder clause (c) and (d) are incorporated. For the purpose of this case, clause (d) which is relevant reads as follows:

> "Sub. Majors especially those who are due for posting to field areas on second spell will not be given a choice posting to peace stations on their last leg of service".

Learned standing counsel for the Central Government placed reliance on this amendment to paragraph 47 of EME Record Office Instructions. Paragraph 50 reads that the Subedars on approved panel for promotion to Subedar Majors will be turned over asfar as possible in two units with two years tenure in each unit. First tenure asfar as possible depending on availability of vacancies will be to field units and the second tenure to the peace units. The following guidelines have to be followed:

a. Subedars who have been in peace station continuously for 4 years or more, irrespective of the period served in the present unit/station, will be posted out to units loc in field. Their posting to peace station will be issued only if no vacancy exists in the field area. It will be ensured that such JCOs are posted to field area for balance tenure as early as possible immediately on occurrence of vacancy.

b. Subedars with less than two years service in peace/field station other than HAA will be promoted in-situ if vacancy exists or side stepped in the same station/command till completion of tenure.

c. Subedars serving in HAA for less than 6 months will be promoted in situ till completion of 2 years tenure if vacancy exists otherwise side-stepped to a field unit in the same command for full field tenure and turned over to peace units for balance of tenure.

d. Border line cases eg. Those due for retirement within 1 or 2 months from the date of occurrence of vacancy and their promotion could not be issued in advance due to administrative reasons (like non receipt of ACRs, delay in review of low medical category etc) will

be allowed to assume rank in-situ, and will be immediately moved to new units. In such cases EME Records will issue promotion-cum-posting order with the stipulation that the JCO will assume the rank of Sub Major in-situ and will be posted out to new units immediately on completion of 28 days unbroken period of service.

e. Except for sub paras (c) & (d) above, no in-situ promotion will be permitted.

Clause (b) of the above paragraph makes it clear that when the Subedars with less than two years in peace/field station other than HAA will be promoted in-situ if vacancy exists or side stepped in the same station/command till completion of tenure. The above provision makes it clear that the officers in the cadre of Subedar are liable to be transferred to any part of India. The transfers can be made subject to the conditions laid down in para 50 of the EME Records Office Instructions. No Government servant or employee of the army personnel has any legal right to be posted at any particular place or place of choice since transfer of a particular employee appointed to the class or category on transfer of post from one place to another is not only an incidence but a condition of service necessary in public interest and efficiency in the administration of the army. Unless an order of transfer is shown to be the outcome of *mala fide* exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts normally cannot interfere in such orders as a matter of routine, as the court cannot substitute its own decision for that of the decision taken by the army personnel. In this case, the transfer order stands issued by the 2nd respondent herein. No *mala fides* are attributed insofar as the 2nd respondent is concerned. It is only against the 4th respondent some allegations have been levelled against, but the 4th respondent is not the authority who issued the impugned proceedings. In the absence of any material against the 2nd respondent who communicated the

impugned proceedings dated 21.5.2004, the proceedings cannot be quashed. Further, the orders issued by the 2nd respondent are in consonance with the EME Record Office Instructions.

However, the learned counsel for the petitioner relied upon a decision in ***C.V.V. Reddy v. Team Leader, Army Team Bharat Dynamics Ltd.*** wherein it is held:

> "it is clear that the rules and instructions governing transfers ensure that, ordinarily, the petitioner will have a tenure of three years at a station. He was transferred to Secunderabad on 1.7.1991. It is not that this term shall not be curtailed. It may be so done in the exigencies of service. But such exigencies must be manifest when it is called in question. It is evident that there was departure from the normal procedure in ordering transfer of the petitioner".

Basing on the facts of the case this court held that the transfer of the petitioner therein was illegal. But, in the instant case clause (d) of amendment to para 47 of EME ROI 2/94 dated 27.2.2001 makes it very clear that Subedar Majors who are due for posting to field area on second spell will not be given a choice posting to the peace station on their last leg of service. As per paragraph 50, a Subedar Major is required to serve two years in the field and two years in the field of peace in the rank. However, the petitioner served only one year in the field in the present rank. Therefore, the present transfer order has been issued to complete the remaining one year in the field area. So, the order of transfer is completely in accordance with the EME Record Office Instructions, Secunderabad. Since no *mala fides* are attributed against the 2nd respondent, it is not a fit case to interdict the transfer order.

The order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court.

Lastly it is submitted that the petitioner was unceremoniously sent from the office and that his pension papers have to be processed. That is not the subject matter of the *lis* in this case. The pension papers can be process even from the present station.

There are no merits in the writ petition and it is accordingly dismissed. In the circumstances, no order as to costs.

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K.C. Bhanu, J.

Date: --11—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The DG EME Army HQ New Delhi.
2 Officer In Charge EME Records & The Commandant, 1 EME Centre, Secunderabad (A.P.)
3 The Commanding Officer 3 Training Battalion, IEME Centre, Secunderabad, A.P.
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